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IN THE

Supreme Court of the United States

October Term, 1934

No. [redacted] 20

RAYBESTOS-MANHATTAN, INC.,
Petitioner

vs.

THE UNITED STATES

PETITIONER'S BRIEF

For Use Upon Argument or Submission of Case

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No. 850

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For Use Upon Argument or Submission of Case

OPINION BELOW

The opinion of the court below (R. 76-79) is reported in 10 F. Supp. 130.

ARGUMENT

Petitioner having set forth in its petition, under the caption "Summary Statement of the Matter Involved," the specific claims advanced and the judgment of the court below thereon, and, under the caption "Reasons Relied On for the Allowance of the Writ," a statement of the questions presented and references to cases believed to sustain the Court's jurisdiction, petitioner confines this, its brief for use upon argument or submission of the case, to an argument dealing with the points of fact and of law deemed to have the most important bearing upon the final determination of said questions.

Provisions and Operation of the Law

Schedule A-3 of Section 800 of the Revenue Act of 1926 (44 Stat. 99, 100), pursuant to provisions of which the stamp tax here involved was imposed, deals exclusively with a stamp tax on sales, or agreements to sell, or memoranda of sales or deliveries of, or transfers of legal title to shares or certificates of stock or of profits or of interest in property or accumulations in any corporation, or to rights to subscribe for or to receive such shares or certificates, whether made upon or shown by the books of the corporation, or by an assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale, whether entitling the holder in any manner to the benefit of such stock, interest, or rights, or not.

Said Schedule A-3 immediately follows a schedule of the statute imposing a 5 cent per share tax on each original issue of certificates of stock, or of profits, or of interest in property or accumulations, by any corporation, and the clear import of the language used in said Schedule A-3 is that it imposes an additional tax of 2 cents per share whenever and as often as the *legal title* to shares or certificates of stock or of profits or of interest in property or accumulations in such corporation is subsequently dealt with so as to effect an actual sale of or a transfer to another of the owner's legal interest in or to such shares or certificates.

Shares of corporate stock being regarded as property—a species of incorporeal property, consisting of rights in the profits, management, and assets of a cor-

poration—an unrestricted owner of such shares may dispose of his title to them as he pleases. The right of the holder and owner to alienate his title thereto is incidental to his ownership of the shares, upon the ground that such shares are characterized by the same rights or property features as other forms of property.

Certificates of stock, however, are not in a strict technical sense "negotiable instruments." They are nonnegotiable in the sense that a complete transfer of title, good not only between the parties but also against the corporation itself, can be made only with the concurrence of the corporation in pursuance of its charter, governing statute, or operative by-laws. While not negotiable like bills or notes, certificates of stock are so framed and dealt with as to be transferable, when properly indorsed, by mere delivery, and, when the owner desires to sell or transfer his capital interests in a corporation, the indorsement and delivery of his certificates conveys, by estoppel against the corporation, as good a title to the purchaser or transferee as if the certificates were negotiable in the broader sense.

As such certificates are frequently put in negotiable form to permit of some sort of commercial use, without effecting a sale or transfer of the title to the shares, such as to serve as collateral security for a loan, they are often spoken of and treated as quasi negotiable instruments.

Recognizing that such a commercial use of certificates of stock is frequently resorted to without effecting the kind of sale or transfer of legal title intended to be covered by said Schedule A-3, the first

proviso added to the language used in imposing the tax reads, as follows:

> "Provided, That it is not intended by this chapter to impose a tax upon an agreement evidencing a deposit of certificates as collateral security for money loaned thereon, which certificates are not actually sold, nor upon the delivery or transfer for such purpose of certificates so deposited, nor upon mere loans of stock nor upon the return of stock so loaned."

In applying the provisions of said Schedule A-3, it becomes necessary to inquire into the real status of the *legal title* to the shares or certificates and to ascertain whether or not in the particular transaction involved the shares or certificates were dealt with so as to effect a change in the *legal title* by way of an actual sale or a transfer to another within the meaning of the statute.

Legal Title to Shares or Certificates of Stock of the Raybestos Company

The Raybestos Company parted with its legal title to the 118,672 shares of its common stock upon its issuing same for value to those who became the holders and owners of said shares and entitled to participate in dividends, or distributions of surplus profits, of the corporation, and entitled, upon the dissolution of the corporation, to participate in the distribution of the net assets of the corporation. The certificates of stock, full-paid and non-assessable, issued to said stockholders, evidenced the capital interest of each holder in the corporation and in the business it conducted. The legal title to said 118,672 shares at time

of combining the business of the corporation with the businesses of certain other corporations, as hereinafter mentioned, was in the holders and owners of the certificates of stock, and not in The Raybestos Company, as such, and same could not be sold or transferred to another, and the stamp tax under said Schedule A-3 made applicable, through or by the acts of any parties, including The Raybestos Company, other than those of such holders and owners.

The holders of the legal title to said 118,672 shares did not indorse their certificates and deposit same with the Committee or with the Guaranty Trust Company of New York, Trust Department, as Depository, for the purpose of selling or transferring their legal title to the capital interests that the certificates evidenced, but they indorsed and deposited same for the purpose of participating in the consummation of a Plan (R. 12) proposed to combine the business of The Raybestos Company with the businesses of The Manhattan Rubber Manufacturing Company and United States Asbestos Company, with a fair expectation that such a consolidation of the businesses would be advantageous to their said capital interests, by bringing about substantial economies both in manufacturing and selling expenses of the products in which said companies dealt, with each holder of said 118,672 shares receiving 2.25 shares of "the New Company" (RAYBESTOS-MANHATTAN, INC.), formed to acquire all of the assets of the three companies, and to assume all of their obligations and liabilities, in exchange, or replacement, for each share of The Raybestos Company stock, so as to evidence the same capital interest in

dollar value of the holder after the businesses were combined that he had in the business of The Raybestos Company at the time of consolidation; and, if said Plan failed of consummation, he was entitled to the return of his indorsed certificates so deposited (R. 12). The Plan (R. 12) was supported by an "Agreement" between the Committee and the Depositors (R. 14). The letter, dated May 22, 1929, (R. 9) sent out by the president of The Raybestos Company to holders of common stock of that Company, as well as the Plan and the Agreement (R. 9-26), defines how and to what extent the holders of said stock were to participate in the combining of the business of The Raybestos Company with the business of said other companies. They were to participate by having their capital investments in the assets and the business of The Raybestos Company, measured by a dollar value, follow said assets and business from the control and management of The Raybestos Company into the control and management of "the New Company" without their parting with their legal title to their capital investments in the assets and business, without their selling or transferring to another or others their capital interests, evidenced immediately before the movement by 118,672 shares of The Raybestos Company, and evidenced immediately after the movement by 267,012 shares of "the New Company" (RAYBESTOS-MANHATTAN, INC.), without immediate gain or loss in dollar value.

In what manner and to what extent The Raybestos Company participated in the movement of combining its assets and business with the assets and businesses of other companies are matters either collat-

eral or incidental to the manner and extent in which the holders and owners of the capital stock of The Raybestos Company participated in that movement, as what The Raybestos Company, as such, did or omitted to do has no direct bearing upon what the holders of the stock alone could or did do with respect to the legal title to the shares or certificates of stock or of profits or of interest in property or accumulations in The Raybestos Company belonging to said stockholders as their absolute property.

To make the sales or transfers stamp tax applicable, under what actually happened in this case, the United States representatives assessing a stamp tax under said Schedule A-3 in the sum of $7,620.24, as of February 3, 1933 (R. 61), were forced to assume or to imply that something done or omitted to be done by The Raybestos Company effected a sale or transfer to The Raybestos Company, as such, of the legal title to said 267,012 shares, on which a part of said $7,620.24 was assessed (R. 93), notwithstanding that the Plan and the Agreement, as aforesaid, provided that said 267,012 shares were to be issued in replacement of said 118,672 shares, and said 118,672 shares were not owned or held by The Raybestos Company, as such, at any time during the transaction carried into consummation. What in substance happened to the stockholders' interests, dealt with in the particular transaction, was that their capital investments were removed, at their dollar value, from one container or holder and were placed in another and larger container or holder, at said dollar value, where other interests, at their dollar values, were about to be or had been placed, and with which they

commingled without destroying the dollar value of any of the commingled interests, each stockholder of The Raybestos Company and each stockholder of the other companies having after the interests were united in Raybestos-Manhattan, Inc., the same capital investment in dollar value in the commingled property that he had in property while it remained in one or another of the original containers or holders. No stockholder lost or parted with his *legal title* to his capital investment, valued in dollars as of the time of the commingling of capital interests, any more than if that title had been in some corporal commodity, as milk measured in quarts, when combined with other definite quantities of such commodity, would cause him to lose or part with his legal interest in his property. When the respective owners of 2, 3, and 5 quarts of milk pour their milk into a single container, of sufficient capacity to hold 10 quarts, the owners' interests in the mingled milk remain 2, 3, and 5 quarts respectively.

Legal Title to Shares or Certificates of Stock of United States Asbestos Company

What has been said herein with respect to the title to 118,672 shares of the common stock of The Raybestos Company, for which petitioner delivered 267,012 of its shares in replacement, could with equal meaning and propriety be said for like purposes concerning the title to 100,000 shares of the common stock of United States Asbestos Company, for which petitioner delivered 114,000 of its shares in replacement, as the legal title to said 100,000 shares was vested, at the time of combining the businesses of the

three corporations, in individual owners, and not in the United States Asbestos Company, as such, and said owners participated in the combining of the businesses in the same manner and with the same results that the owners of the common stock of The Raybestos Company participated therein.

Legal Title to 381,012 Shares of Raybestos-Manhattan, Inc., Common No Par Value Stock

The original issue of 381,012 shares of Raybestos-Manhattan, Inc., stock delivered pursuant to the Plan and Agreement to stockholders of The Raybestos Company, who received 267,012 of said shares in replacement of their 118,672 shares of The Raybestos Company, and to stockholders of United States Asbestos Company, who received 114,000 of said shares in replacement of their 100,000 shares of United States Asbestos Company, either evidenced or in substance was the very extent to which said stockholders, owning capital interests in the businesses consolidated, participated in the consummation of the Plan without selling or otherwise disposing of their legal title in said interests. The original issue tax of 5 cents per share was paid (R. 75). The additional tax of 2 cents per share (in issue here) was paid under protest (R. 75).

Theory of Court Claims False and Incorrect

The judgment of the Court of Claims of the United States (R. 80) rests upon a theory that your petitioner was a party to a transaction whereby your petitioner took over the assets of The Raybestos Com-

pany and the United States Asbestos Company, instead of your petitioner acquiring the stock of the stockholders of those companies (R. 78), which said theory is false and incorrect in that your petitioner was a party to a transaction whereby your petitioner not only took over said assets but also assumed all the obligations and liabilities of those companies, including the obligations and liabilities of those companies to their stockholders, as all the capital interests of those companies, evidenced by their issued and outstanding certificates of stock at the time of said transaction, participated in said transaction and were of the very essence of said transaction.

Capital Interests in Stockholders

The assets and businesses of those companies, subject to the obligations and liabilities of those companies, excepting only in a restricted technical sense relating to certain rights and property interests given by law to the artificial person created by law for special corporate purposes, were the very capital interests of the stockholders which their certificates of stock evidenced as the property of said stockholders. To ignore the legal title to shares or certificates of stock or of profits or of interest in property or accumulations in any corporation, without the consent of the holders or owners of such shares or certificates, and without an expressed willingness and intent of such holders or owners to divest themselves of their legal title to such shares or certificates to a purchaser or a transferee for value, and to make the original issue of said 381,012 shares of Raybestos-Manhattan, Inc., common no par value stock go to any other party

than to such holders and owners, who participated in the transaction, as aforesaid, in consideration that they would receive said 381,012 shares in replacement of the shares they deposited for purposes of consummating said transaction, would have been acts beyond the very purpose for which Raybestos-Manhattan, Inc., was created and organized, and would have been acts incompatible with the very essence of the transaction consummated.

CONCLUSION

Your petitioner, still maintaining and contending that the said additional 2 cent per share tax was illegally collected, under the facts and circumstances of this case, because, in the first place, the consolidating corporations, as such, had no right to receive their own issued and outstanding shares of stock from the *bona fide* owners of said shares without said owners giving them that right, which they did not do, and because in the second place, the consolidating corporations had no right to receive said 381,012 shares of Raybestos-Manhattan, Inc., common no par value stock given in exchange for or replacement of said issued and outstanding shares without said *bona fide* owners giving them that right, which they did not do, submits that said judgment of said Court of Claims should be reversed by this Honorable Court.

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